United Nations A/HRC/29/NGO/45

General Assembly

Distr.: General
5 June 2015

English only

Human Rights Council
Twenty-ninth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-09027 (E)
1509027

Please recycle

India: extrajudicial executions and torture are defining characters of India's security establishment

1. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, after his visit to India from 19 to 30 March 2012 has filed a report to the 23rd Session of the Human Rights Council held in 2013. To the observations made by the Rapporteur in his report, the Government of India has filed comments on 27 May 2013. The Asian Legal Resource Centre (ALRC) supports the report made by the Rapporteur, particularly concerning the following subjects, to which the Government of India has taken objections or has sought further clarifications from the Rapporteur.

2. (a) Allegation letters received by the Government of India from the Rapporteur: Organisations like the ALRC have sent detailed case reports to the Rapporteur, of cases that fall under the Rapporteur's mandate. The ALRC has also communicated the same to the Government of India, to its responsible offices in New Delhi, and at the state capitals from where these cases are reported.

3. It is the responsibility of the state party to enquire into these cases, and to provide for remedies. The fact is that legal remedies for human rights abuses in India are a distant possibility. The ALRC has arrived at this conclusion with its experience of having worked and analysed the capacity of India's justice process to be able to provide effective and timely legal remedies. The legal system in India is clogged with enormous delays that often extend to decades, thereby rendering seeking a remedy to human rights abuses through India's legal process a wasteful exercise.

4. Besides, in cases of extrajudicial execution, more commonly referred to as "encountered killings" in India, the nucleus of a legal remedy, as in any other criminal investigation, is located in the willingness and the capacity of the law enforcement agency to undertake impartial, prompt, and scientific crime investigation. The ALRC is of the opinion that the law enforcement agencies in India lack the capacity and willingness to undertake such investigations.

5. Between January and May 2015, the ALRC has reported 25 cases of extrajudicial executions from the states of Andhra Pradesh and Telangana. The state police in both states were not even willing to undertake autopsies and file reports to the National Human Rights Commission in India on the two occasions the Commission directed them to do so. This reiterates ALRC's observations that human rights violations committed by law enforcement agencies in India are not an aberration against which corrective actions can be taken, but are, on the contrary, what is expected of law enforcement agencies as their duty in India. Hard legislations like the Armed Forces (Special Powers) Act, 1958, are statutory legitimisation of archaic law and order enforcement policy. Such laws negate the very principle of fair trial, and the concept of democracy.

6. (b) On arbitrary and unlawful arrest and deaths in custodies: Custodial torture and deaths arising out of custodial torture is not a rare occurrence in India. Torture is the most commonly used tool by the police. Contrary to popular perception, torture is not often used to extract a confession from the suspect, but as a tool for social control in India.

7. On the other hand, crime investigations begin and end with confessions obtained through torture. In such a setting, modern crime investigation has no place in Indian policing. Law enforcement in India therefore is not a process that follows the normative frameworks of fair trial but an activity that state agencies engage in to rule by fear.

8. The ALRC has not come across more than 16 cases during the past 10 years where police officers or other law enforcement officers were investigated, prosecuted, and punished for custodial deaths. Such low number of convictions is not because torture or custodial deaths do not happen in state custody. It indicates the extent of impunity that law enforcement agencies enjoy in India for acts of crime – including extrajudicial killings – in which they engage. India does not have a policing policy or a national police commission that could initiate or augment a reform policy that could lead to ending the practice of torture or extrajudicial executions.

9. (c) On gallantry awards to security officers after encounters: It continues to be government policy to award law enforcement officers who engage in extrajudicial executions in India. So much so, there are police officers in most Indian states, particularly in states like Karnataka, Tamil Nadu, Andhra Pradesh, Telangana, Maharashtra, Madhya Pradesh, Rajasthan, Gujarat, Uttar Pradesh, Punjab and Haryana, Orissa, West Bengal, Manipur, Tripura, Nagaland, and Assam, where officers who regularly engage in extrajudicial executions have received encouragement from the government and awards and promotions. The media celebrate these officers by referring to them as "encounter specialists".

10. If the Government of India's claims, that its judiciary is independent, responsive, and effective enough, and that the government respects its judiciary's mandate, is true, extrajudicial executions would not have recurred in India despite the Supreme Court of India's observations that "executive elimination is not a process that is allowed under the frameworks of the constitution" in India.

11. In the above context, the ALRC requests the Rapporteur to work with the Government of India to end crimes committed by law enforcement agencies in the country, including acts of extrajudicial execution, with an understanding that the manner in which law enforcement agencies in India behave is not an aberration in the character of this institution; it is this behaviour that is is expected of the institution. Law enforcement agencies in India enjoy disproportionate impunity by comparison to the risk an officer has to face at work.

12. Keeping Indian law enforcement agencies the way they are, is, in fact, India's policing policy. This is a means by which persons occupying seats of power in policy making entities in India, like elected representatives in the state legislative assemblies, and at the national Parliament, can continue contesting elections despite having crimes of serious nature, including that of corruption, pending investigation against them for decades. An estimated 56% of the elected representatives in India fall into this category.

13. The ALRC therefore encourages the Rapporteur to engage with the Government of India, and help the government thoroughly reform its criminal justice process, which, at the moment, is incapable of adhering to principles of the rule of law, democracy, and fair trial.